

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/908,884 08/08/97 DONG

X 00786/33904

CLARK & ELBING
176 FEDERAL STREET
BOSTON MA 02110

HM12/0225

EXAMINER

NELSON, A

ART UNIT

PAPER NUMBER

1649

16

DATE MAILED:

02/25/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



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Patent and Trademark Office

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Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☒ is extended to run 6 mo or continues to run _____ from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 2/1/00 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☐ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:

- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. ☐ They raise new issues that would require further consideration and/or search. (See Note).
- c. ☐ They raise the issue of new matter. (See Note).
- d. ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: NEW 112 SECOND REJECTION OF AMENDED CLAIMS 10-12. IT IS NOT CLEAR TO WHAT "that refers" refers - the claim language suggests it refers to the cytokin repeat.

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing an appeal, the proposed amendment ☒ has been ~~will be~~ entered ☐ will not be entered and the status of the claims will be as follows:

Claims allowed: _____

Claims objected to: _____

Claims rejected: 1, 2, 4-13, 15-29, 36, 40-42

However,

☒ Applicant's response has overcome the following rejection(s): other 112, second rejections except as stated below.

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because 112, second rejection maintained for claim language "specifically, by bridges to." The conditions in the specification are example conditions (in view of language "may include"), and *
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other * it is not clear what specific set of conditions is intended. Also, 112 first rejections are maintained because Applicant has not definitively disclosed other isolated DNAs which encode pathogen resistance polypeptides, and hence Applicant has not described, nor enabled, the broad case of the invention.

Amy Nelson
AMY NELSON
PATENT EXAMINER